

EXHIBIT F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.) Case No.
) 18 Civ. 8175 (ER)
BARRY C. HONIG, ROBERT LADD, ELLIOT)
MAZA, BRIAN KELLER, JOHN H. FORD,)
GRQ CONSULTANTS, INC., and HS)
CONTRARIAN INVESTMENTS, LLC,)
)
Defendants.)
_____)

VOLUME 1

VIDEOTAPED DEPOSITION OF ROBERT LADD

VIA VIDEOCONFERENCE

Thursday, October 15, 2020

REPORTED BY:
GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR
VICTORIA L. VALINE, CSR 3036, RMR, CRR
JOB NO. 201015GCH

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Videotaped deposition of ROBERT LADD,
taken on behalf of Plaintiff, all parties appearing
remotely via Webex, beginning at 10:07 a.m. EST and
ending at 6:36 p.m. EST, on Thursday, October 15, 2020,
before GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR, and
VICTORIA VALINE, CSR No. 3036, RMR, CRR.

A P P E A R A N C E S

(All appearances via videoconference.)

For the Plaintiff:

SECURITIES AND EXCHANGE COMMISSION

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Also Present: NANCY HOLMSTOCK, Videographer

1 to cut too fine a point on it, but this purports to
2 be that. I have no way to know if E-Trade is
3 accurate, inaccurate. I have no reason to believe
4 that it's inaccurate. So based on what I see here,
5 that's what it is.

6 Q. Well, when you opened the account, you
7 filled out an online application form, did you not?

8 A. I believe so. That's how you open your
9 account.

10 Q. Okay. And do you have any reason to
11 believe that the information that's reflected on
12 Ladd Exhibit 8 is not the information you supplied
13 to E-Trade on or about November 22nd, 2015?

14 A. No. As I said, I believe that would be
15 accurate, so I'm not disputing its accuracy.

16 Q. All right. So let's look at some of the
17 answers, and I'm going to focus in on the middle
18 column here. You write, "Occupation: Retired."
19 And then you write under "Director of policy-making
20 office of publicly owned company? No." And then
21 under "Employer," you leave it blank. And each of
22 those answers to those questions was false, was it
23 not?

24 A. Correct; they are not correct answers.

25 Q. Because you were both a director and an

1 officer of MGT; correct?

2 A. Yes.

3 Q. And you were not retired?

4 A. Yes.

5 Q. And you were employed.

6 A. Correct.

7 Q. Okay. Now, we've already established, I
8 think -- and, correct me if I'm wrong -- that you
9 deposited the shares held by Ladd Cap Value into
10 this account; is that right?

11 A. Yes.

12 Q. And so why is the account opened in your
13 name and not the name of Ladd Cap Value Partners?

14 A. So the -- I believe it's very -- it was
15 and probably still is very difficult and
16 time-consuming to open an account in the time of
17 a -- what do you call it -- limited partner. It's
18 probably a lot more paperwork to do. That's about
19 the only reason I can think of.

20 Q. And when you sold shares in that account,
21 where did the money go?

22 A. I'm not positive. I could have taken it
23 out. But keep in mind I was, if not the total
24 ownership of Ladd Cap Value, it was sort of a
25 semantic name. So I don't want my answer to

1 reflect the implication here that I somehow
2 transferred someone else's property to me.

3 Q. Okay. Ladd Cap had its own bank account;
4 correct?

5 A. Yes.

6 Q. Okay. Now, in October 2015, as you've
7 already alluded to, you had two accounts in your
8 own name at TD Ameritrade; correct?

9 A. I believe so. It was an IRA and a
10 regular.

11 Q. And you transferred some of your own
12 shares from the TDA non-IRA account into the
13 E-Trade account; is that right?

14 A. Yes, I believe 300,000 or something.

15 Q. All right. Let's look at Tab 10. Tab 10
16 is a document we have marked as Ladd Exhibit 10.
17 And it's a composite of two different months' TD
18 Ameritrade statements for the non-IRA account in
19 your name. They are from November '15 through
20 December 2015. Do you recognize these accountant
21 statements?

22 A. Yes.

23 (Deposition Exhibit 10 was marked for
24 identification by the reporter and is
25 attached hereto.)

1 BY MS. BROWN:

2 Q. And you recognize them as your -- is it
3 accurately reflecting the activity in your non-IRA
4 TD Ameritrade account for those periods?

5 A. Yes.

6 Q. Okay. All right. So the November
7 statement -- and I will give you a Bates number.
8 So it's E-Trade 90 -- oops, hold on, 974. It shows
9 a transfer of 300,000 shares out of that account.
10 Correct?

11 A. Yes.

12 Q. And you recall those being transferred to
13 the E-Trade account?

14 A. I do.

15 Q. Okay. And then on page 823, it reflects a
16 second transfer on December 10th, 2015, of 23,901
17 shares, also to E-Trade; is that right?

18 A. I don't see it yet, but -- what was that
19 Bates stamp again? 822?

20 Q. 823.

21 A. Yeah, I see that.

22 Q. Okay. So is it fair to say that in your
23 E-Trade account, as you recall, you had both shares
24 belonging to Ladd Cap Value Partners and shares
25 belonging to you; is that right?

1 A. That's correct.

2 Q. All right. So let's move to Tab 11, which
3 we premarked as Ladd Exhibit 11. And for the
4 record, I will represent that these are account
5 statements produced to us from E-Trade, and they
6 span the months November 2015 through April 2016.

7 A. Okay.

8 (Deposition Exhibit 11 was marked for
9 identification by the reporter and is
10 attached hereto.)

11 BY MS. BROWN:

12 Q. Do you recognize these as account
13 statements that reflect the activity in your
14 E-Trade account for that period?

15 A. Yes.

16 Q. All right. So we see in the November
17 statement, that is E-Trade 97, the receipt on
18 November 27 of 433,000 shares plus some, and also
19 in that same date, the receipt of 300,000 shares;
20 right?

21 A. Yes.

22 Q. And on E-Trade 105, we see the receipt of
23 23,901 shares; correct?

24 A. Yes, we do.

25 (Reporter interruption.)

1 A. I did not.

2 Q. Okay. Tell me what your understanding of
3 Rule 144 was as it related to your trading of MGT
4 securities in October or November of 2015.

5 A. Well, what I knew and probably still know
6 about form 144, it's an archaic SEC form that is to be
7 filed contemporaneously with -- or before any sales.

8 Q. And that applied to you because you were an
9 officer or director of MGT; is that right?

10 A. That's right.

11 Q. Okay. And did you understand that Rule 144 --
12 putting aside form 144 -- Rule 144 imposed volume
13 limitations on the number of shares that you could sell
14 during a 90-day period?

15 A. Yes.

16 Q. And what's your understanding -- what was your
17 understanding then of how those volume limitations are
18 calculated?

19 A. It is the greater of one percent of the
20 outstanding or the average weekly trading volume in the
21 prior four weeks.

22 Q. And you knew that in November 2015, right?

23 A. Correct.

24 Q. Okay. You knew that because you had, in fact,
25 done those calculations in connection with sales that

1 don't know, sitting here, yes or no, but obviously if I
2 filed it, it would be on EDGAR.

3 Q. Did you have an understanding of the
4 requirements of Exchange Act Section 16 as it relates to
5 the disclosure of purchases or sales that you've made in
6 MGT securities?

7 A. Yes.

8 Q. What was that understanding?

9 A. That you were to report purchases or sales
10 within 48 hours and file form 4.

11 Q. And how did you gain that understanding?

12 A. That's something I knew -- I knew it.

13 Q. Now, Mr. Kaplowitz didn't have access to your
14 trading records at either E-Trade or TD Ameritrade, did
15 he?

16 A. I don't think so.

17 I guess that's a question for Mr. Kaplowitz,
18 but he wouldn't normally have that.

19 Q. Fair enough.

20 Did you have an understanding of the purpose
21 of form 4, like what disclosure it was meant to provide?

22 A. Yes.

23 Q. And what was that?

24 A. Well, as I said, it's to disclose purchases
25 and sales by section 16 officers and directors in the

1 sale of their securities.

2 Q. All right. Let's mark Ladd Exhibit 16, which
3 is found at tab 16.

4 (Deposition Exhibit 16 marked.)

5 Q. And I'll just explain for the record that this
6 is a composite of three form 4s. The first one we've
7 already looked at in Exhibit 7, which is the -- yeah.
8 No. That's the second one.

9 The second one we've already looked at in
10 Exhibit 7, that's the 12/1/2015 form 4. The first one
11 is a 10/9/15 form 4. And the third one is a
12 May 31, 2016, form 4.

13 Do you recognize these, Mr. Ladd?

14 A. Yes.

15 Q. And are they form 4s that you signed?

16 A. Well, it's, you know, how they do it
17 electronically, but yes, I approved its issuance.

18 Q. That's your electronic signature.

19 All right. And is it your testimony that
20 Mr. Kaplowitz or someone at Sichenzia actually filled
21 out these forms and you then reviewed them and approved
22 them?

23 A. Right.

24 That was normally a certain printing
25 requirement -- like SIC codes and certain ways to get it

1 into EDGAR. I never bothered figuring that out. I
2 don't have a way to input into EDGAR myself.

3 Q. You have a service that does that, right?

4 A. We have a service for normal filings, and how
5 the lawyer gets it filed I can't tell you for sure, but
6 he probably uses that service, communicates with them,
7 but I'm not saying that this is wrong at all. I mean
8 it's -- I'm sure I reviewed it, and I just say
9 personally I don't file.

10 Q. Okay. And where did Sichenzia get the
11 information to fill out these forms?

12 A. I think I answered that before, that generally
13 they'll get it from the person. And as far as certain
14 calculations that they may make, they do those either on
15 their own or, you know, kind of check the previous
16 form 4s and, you know, subtract or add as needed.

17 Q. And how do they know how to subtract or add as
18 needed?

19 A. Based on what I tell them that I did
20 trading-wise.

21 Q. All right. So let's look at the first page of
22 Exhibit 16 which is the form 4 dated 10/9, and that
23 shows -- if I'm reading this correctly -- an acquisition
24 of 200,000 shares on October 7, 2015, correct?

25 A. Yeah.

1 It's letter code A, but it's a grant of stock.

2 A restricted grant of stock.

3 Q. All right. And then in column 5 it says,
4 "Amount of securities beneficially owned following
5 reported transactions," and what's listed there is
6 373,603 shares.

7 Do you see that?

8 A. Yes.

9 Q. All right. And there's a Footnote 2, and it
10 says, "Does not include 622,471 shares owned by Laddcap
11 Value Partners III LLC."

12 Do you see that?

13 A. Yes, I do.

14 Q. And that was accurate as of -- that
15 information was accurate as of October 9, 2015?

16 A. Yes. I felt it was accurate. Maybe it was
17 off by a few shares, but I believe it's accurate.

18 Q. All right. And then let's go to the next one,
19 which we've looked at before, which is the
20 December 1, 2015, and it reflects a sale of 100,000
21 shares on November 30, 2015, right?

22 A. Which tab was that? Is that still 16?

23 Q. Yep. Second page.

24 A. Right.

25 And that's -- when I was referring to

1 subtraction, that's how that 273,603 number is
2 generated.

3 Q. Got it. Okay.

4 So if we look back at your E-Trade statements
5 for November of 2015, so that's Exhibit 11, so tab 11
6 for you.

7 A. Okay.

8 Q. And we look at the Bates number 96, and that
9 shows sales of MGT shares on November 30, 2015, right?

10 A. Right. I guess that applies to the prior
11 form 4.

12 Q. Okay. When I add these up I get 97,790
13 shares, but you list on your form 4 at Exhibit 16 a
14 hundred thousand.

15 A. The only thing I could say, without seeing the
16 next month, maybe one of the trades was November 1st or,
17 secondly, I made an error in my calculation.

18 Q. All right. But you didn't sell the remaining
19 shares from a different account, did you?

20 A. No. This was -- this appears to be, and I
21 have no reason to doubt this is the 100,000 shares
22 that's reflected in that form 4.

23 Q. All right. Let's look at the -- back to
24 Exhibit 16 now on the third page, which is the form 4
25 filed May 31st, 2016.

1 brokerage accounts, that answer is no.

2 Q. Okay. So that first line, again we're back to
3 Exhibit 16 which shows the distribution, it says the
4 amount of securities beneficially owned following
5 reported transactions and it's 157,300.

6 Do you see that?

7 MR. FORD: I'm sorry. Nancy, can you just --
8 where are we again?

9 THE WITNESS: It's 16 --

10 MS. BROWN: We're on the first line of the
11 May 31 form 4.

12 MR. FORD: Thank you.

13 THE WITNESS: I see that.

14 BY MS. BROWN:

15 Q. All right. So that means that Laddcap Value
16 Partners III retained 157,300 shares following the
17 distribution; is that right?

18 A. The truth is no amount of studying this form,
19 as it applies to funds, will make me understand it then
20 or now. So my testimony is that this is so freaking
21 confusing, that I would recommend changes in form 4
22 reporting, but that's, I think, a different issue.

23 But, you know, again when calculating the
24 numbers the lawyers, you know, take away and add, and
25 when I filed it, it did not look materially wrong. And,

1 you know, at the end of the day, let's say the end of
2 the day, what does Laddcap own?

3 That would be, I believe, zero. At least the
4 way a normal person would look at this form. But again,
5 even though it says it only takes a half hour to fill
6 out these forms, let me tell you, it takes way longer.
7 Okay.

8 And then if you look at Ladd, the person, he
9 ends up showing direct ownership of 700 -- sorry, 540
10 shares.

11 Q. All right. So let's just stick with Laddcap
12 Value for a minute, please, if we could. I appreciate
13 your comments, but I want to stick with this line.

14 So this form reflects, as of May 25, 2016,
15 Laddcap Value held 157,300 shares of MGT stock.

16 Would you agree with me that that's what this
17 reflects?

18 A. Again, I see it all at the same date, so the
19 way they might have mixed the sausage out to come out
20 with the right number at the end, I really can't tell
21 you. I don't know.

22 I mean, I can't -- I can tell you for certain
23 this was not meant to deceive the market, for example,
24 that I still had 540,000 shares, but, you know, in
25 reality I didn't. That is certainly not my intent here.

1 I just want you to be appreciative that it was
2 an extremely complex calculation and form to fill out
3 for a -- and again, I'm not going to say to redesign,
4 but in essence, the information that it needed to convey
5 was conveyed, and at the end of the day, that's really
6 what I care about.

7 Q. So the next line reads that on May 25, 2016,
8 157,300 shares were sold, and the footnote says that
9 they were sold by Laddcap Value, correct?

10 A. Yes. That's what it says.

11 Q. Okay. Let's look at tab 19, which we've
12 marked as Ladd Exhibit 19.

13 (Deposition Exhibit 19 marked.)

14 Q. And this is, just for the record, a document
15 we received from E-Trade which purports to reflect
16 trading activity in the Robert Ladd account during the
17 month of May 2016.

18 Do you recognize Ladd Exhibit 19?

19 A. Yes.

20 Q. All right. So you can feel free to flip
21 through this, but you'll see that 147 -- the Bates
22 number 147, there are no trades in MGT stock on
23 May 25th.

24 A. That's correct.

25 Q. Okay. And those shares weren't sold out of

1 your TD Ameritrade account, were they?

2 A. I believe the dates were incorrect on the
3 form 4.

4 Q. Well --

5 A. The dates did not conform with the actual
6 trades at E-Trade, and yes that's an error. But as I
7 said, by the time the form got filed, there was no
8 desire or need, frankly, to show the end result being
9 different than it is.

10 Q. Okay. Understood.

11 But in answering my question, those shares
12 weren't sold out of TD Ameritrade, right?

13 If they were sold, they were sold on a
14 different day out of the E-Trade account; is that right?

15 A. That's my strong assumption right now, yes.

16 Q. Well, again, you reviewed this form and you
17 signed it, did you not?

18 A. Yes, I did. But as I explained before it's
19 not as simple as it looks. Believe me, it's complicated
20 with this pecuniary interest and all that.

21 So I was more focused on the actual economics.
22 I look at the bottom number, is that right that the
23 market knows I own that? I'm basically out of all my
24 shares except for 540,000 now that I own directly.
25 That's what the message --

1 communications.

2 MS. BROWN: Okay. So let me just ask a topic
3 question.

4 BY MS. BROWN:

5 Q. Did you raise any concerns about this form 4,
6 the May 31, 2016, form 4, with Sichenzia? And, if so,
7 when and with whom?

8 A. I'm sure that knowing it was filed late, I
9 told Sichenzia, and they're not going to give me an
10 opinion like it doesn't matter if it's late, as long as
11 it's right.

12 And you know, the truth was there's a million
13 things going on in May, and this was like the least of
14 my concerns. And when I realized I had inadvertently
15 not filed timely, then they put on the date that's
16 wrong, so it it sort of compounded the problem.

17 But what I'm saying again, I hate to keep
18 saying it, is that there was no fraud trying to be
19 undertaken on the market. The fact of the matter is I
20 made mistakes and I allowed mistakes to go out in a
21 form 4. You know, I say that.

22 Q. All right. So back to Exhibit 16, and again
23 the May 31, 2016 form 4.

24 The next line reflects an acquisition that the
25 footnotes explain was a grant from the company on May 26

1 documents that we will all agree reflect the trades.

2 Nancy, we seem to have lost your video.

3 MS. BROWN: Yep. I'm trying to get back in.

4 Hold on. I'm sorry.

5 Okay. I seem to be back.

6 BY MS. BROWN:

7 Q. So Mr. Ladd, will you agree with me that the
8 527,000 shares -- if, in fact, that's correct -- from
9 the E-Trade account that was sold in May 2016, except
10 for whatever may be in that line, 33,603 shares, none of
11 those sales are reflected in this form 4?

12 MR. FORD: Nancy, your video still is not on.

13 MS. BROWN: Now it's coming.

14 MR. FORD: Great. Thank you.

15 THE WITNESS: I mean, should I take 10 minutes
16 to review this?

17 Will I need to take 10 minutes to review this
18 to see --

19 BY MS. BROWN:

20 Q. Feel free, because I'm asking you the question
21 of whether those sales are reflected anywhere on form 4.
22 So if you need 10 minutes to be able to answer that
23 question, please take it.

24 A. Okay. So, I mean the form 4 does reflect
25 some, if not all, of the E-Trade shares.

1 Q. Thank you.

2 A. Again, the exact quantities might be wrong, as
3 well as the dates.

4 Q. So why did you choose to file a form 4 on
5 May 31st?

6 What prompted you to do so?

7 A. Excuse me.

8 Because I had realized I didn't, and I thought
9 that I should.

10 Q. And is it true that you had also made
11 purchases and sales of your MGT stock in your E-Trade
12 account between November 2015 and April of 2016?

13 A. I believe, from looking at the records, it was
14 purchase sales that netted out to minus 40,000 shares.

15 Q. Really? Okay.

16 Let's look at Exhibit 11. Those are your
17 E-Trade statements from November 2015 through
18 April 2016.

19 Do you see that?

20 A. Yeah.

21 Q. And I think you've already said that you have
22 no reason to doubt that they accurately reflect your
23 trading in that account; is that right?

24 A. Yes.

25 Q. Okay. So let's go through them.

1 In the November statement it shows the receipt
2 of the 300,000 and the 433,000 that we've already looked
3 at, correct?

4 A. Yes.

5 Q. And it also shows the sale of 97,790 shares of
6 MGT, correct?

7 A. Right. Right. Such that the holdings were
8 635,000 at the end of that date.

9 Q. Okay. And then on the December statement --
10 and I'm at E-Trade 102 to 103, it shows that you sold a
11 total of 88,052 shares; is that right?

12 A. Which Bates stamp again?

13 Q. 102 to 103.

14 A. It's very small print, so...

15 Q. Mr. Ladd, can we help you in some way?

16 I'm looking at page 102 and I see sales 11/30,
17 11/30, 11/30, 11/30.

18 A. Right.

19 So if those totaled to 80,000, then the answer
20 is yes, I sold those shares.

21 Q. Okay. And you -- you didn't file a form 4 in
22 December, after the 1st of December, did you?

23 A. I don't believe I did.

24 Q. Okay. Let's look at January.

25 If we look at the Bates number 110 to 111, we

1 see that you bought 1,700 MGT Capital shares and you
2 sold 8,000.

3 A. Okay.

4 Q. So the net -- I have the net as 7,000. So I
5 think you bought two times in January on the 4th, one
6 for 1,700 shares, one for 8,300 shares, and then you
7 sold 8,000?

8 A. Okay.

9 Q. Let me have --

10 MR. FORD: Was that a question and an answer,
11 Nancy?

12 MS. BROWN: Well, I'm just trying -- I'm
13 trying to focus him on the actual transactions. So
14 there were two buys and two sells.

15 MR. FORD: Okay. Lets just stick --

16 MS. BROWN: Thank you.

17 BY MS. BROWN:

18 Q. Were any of those transactions noted on a
19 form 4 that you filed in January --

20 A. The trades --

21 Q. -- 2016?

22 A. Maybe I can make it even more clear. The
23 trades that are on Bates stamp 110 --

24 Q. Yes.

25 A. -- those were not reported.

1 Q. All right. And the sales were?

2 A. I said none of the trades were reported, as
3 far as I remember.

4 Q. Okay. Okay. And then on page 117 to 118
5 reflects your trading activity in February. And aside
6 from two instances of buying -- oh, no, maybe it's four
7 instances of buying, you were a net seller of MGT
8 securities during that month; is that correct?

9 A. Yeah. I think -- so that's what I was
10 referring to when I said negative net 40. So that
11 probably --

12 Q. You were referring to that one month?

13 A. Exactly. At least that was the month I
14 remembered.

15 Q. Okay. Then if we turn to March, it looks like
16 you sold 12,000 shares. And I'm on 124.

17 A. Okay.

18 Q. And those shares -- those transactions weren't
19 reported either, right?

20 A. No.

21 I -- well, just to be clear, it says that I
22 sold 5,000, 7,000, and bought 7,000. None of those
23 trades were reported.

24 Q. It says you sold 12,000 total, right?

25 A. Right. But then it shows at the bottom that I

1 bought 7,000.

2 Q. Of Notis Global.

3 A. You're right. My bad. I retract that.

4 Q. Okay. On page 130 --

5 A. It's very small print.

6 Q. -- in April --

7 A. What Bates stamp are we at?

8 Q. 130. That's the April statement.

9 A. Okay.

10 Q. And it looks like you sold only, and you sold
11 60,472 shares.

12 A. That's the total of the sales in April, yes.

13 Q. Okay. And did you report any of those sales?

14 A. I did not.

15 Q. Thank you.

16 MR. FORD: Nancy, we've been going for about
17 an hour and a quarter. Do you want to take a 10-minute
18 break?

19 MS. BROWN: It's up to you.

20 MR. FORD: Well, I don't want to interrupt if
21 you're in the middle of something.

22 THE WITNESS: I would rather finish this
23 section that requires tiny type to make sure I get that
24 correct, and then --

25 MR. FORD: Okay.

1 THE WITNESS: -- if there's another topic area
2 coming up soon, that would be an easy way to break.

3 MR. FORD: Okay.

4 THE WITNESS: But it's not my call.

5 BY MS. BROWN:

6 Q. So when you filed the form 4 on May 31, 2016,
7 why did you omit all of the purchases and sales that
8 were -- we just went through that are reflected on
9 tab -- Exhibit 11 -- Ladd Exhibit 11?

10 A. I can only speculate that I just took the May
11 sales from TD and gave those numbers over to Sichenzia
12 and forgot about the other sales, but again, there's --
13 the value of that information is pretty superfluous in
14 my opinion, but I did incorrectly not report it.

15 Q. So I asked you why you decided to file a
16 form 4 on May 31, 2016, and I'm wondering, did it have
17 anything to do with a request from the New York Stock
18 Exchange for information about your trading in MGT
19 securities?

20 A. It did not.

21 Q. Okay. So let's look at what's behind tab 22.

22 That's a document that we've previously marked
23 as Holmes Exhibit 29. And it is -- the cover e-mail is
24 from you to Mr. Holmes and Michael 007, which I'm
25 guessing is Mr. Onghai; is that correct?

1 at that time.

2 Q. And how many refer to your stock sales?

3 A. Very few.

4 MS. BROWN: Okay. We're at a place where we
5 can take 10 minutes. So let's take 10 minutes and we'll
6 come back at 2:47.

7 MR. FORD: Thank you.

8 THE VIDEOGRAPHER: The time is now 2:37.

9 Going off the record.

10 (Off the record at 2:37 p.m. Back on the
11 record at 2:48 p.m.)

12 --o0o--

13 THE VIDEOGRAPHER: We're back on the record.
14 The time is 2:48.

15 MS. BROWN: Thank you.

16 BY MS. BROWN:

17 Q. So Mr. Ladd, your parents, Seymour and Shirley
18 Ladd, had an account at TD Ameritrade; is that right?

19 A. Yes.

20 Q. And on June 19, 2015, they agreed to give you
21 full trading authorization in that account; is that
22 right?

23 A. If that's the date that shows, yes.

24 Q. And how old were they in June of 2015?

25 A. Late 80s.

1 how much can you lose, 25 cents?

2 Of course, I told her you could lose a hundred
3 percent of what you put in, but my feeling was, based on
4 where the company was, I'm the type of investor that
5 wants to minimize the down side. So I thought at the
6 25 cent price it shouldn't go down.

7 Q. And this was a discussion you had with your
8 mother and your father?

9 A. I don't remember, but that's how I remember,
10 you know, it would have been five second -- I'm sorry,
11 five-minute discussion about -- and maybe not even five
12 minutes, maybe one minute.

13 Q. And did you think the board needed to approve
14 your decision to buy MGT shares, is that why you sent
15 this e-mail marked as Holmes Exhibit 31?

16 A. No. I think I was just showing gung-ho
17 leadership and confidence in the company.

18 Q. Did you have any discussion with
19 Mr. Kaplowitz, who is cc'd on this e-mail, at or about
20 this time concerning your decision to buy MGT stock?

21 A. Not that I recall. I don't know if he replied
22 to this e-mail or not, but...

23 Q. At the time you were discussing the trading
24 authorization with your parents, did you and either
25 parent discuss limitations in any respect on what you

1 could buy or sell in the account?

2 A. No.

3 Q. Just fully at your discretion, was that your
4 understanding?

5 A. Yes.

6 Q. Did you, at any time, when you were discussing
7 the trading authorization, discuss with either parent
8 compensation that you would be earning for the trades
9 that you put in their account?

10 A. No.

11 Q. Did you discuss what would happen with any
12 profits that you earned on the trading in your parents'
13 account?

14 A. No.

15 Q. Did you discuss who would be responsible for
16 taxes associated with any profits on the trading?

17 A. A discussion on taxes came up later, but I
18 think with respect to what you're asking, there was no
19 quote pre-discussion of taxes.

20 Q. Okay. I think you mentioned you have
21 siblings, I think you have a brother and a sister; is
22 that right?

23 A. Yes.

24 Q. Did you have discussions with either one of
25 them about the trading authorization before your parents

1 granted it?

2 A. I don't believe I did. I don't know if my
3 parents said anything, but...

4 Q. Well, in later discussions you've had with
5 your brother or your sister, have you learned that your
6 parents did discuss with either one of them your trading
7 authorization?

8 A. No.

9 Q. Okay. So let's look at that trading
10 authorization. So turn to tab 27. A document we've
11 marked as Ladd Exhibit 27.

12 (Deposition Exhibit 27 marked.)

13 Q. And -- the document we received from
14 TD Ameritrade that's titled "Trading Authorization
15 Agreement."

16 Do you recognize Ladd Exhibit 27?

17 A. Yes.

18 Q. And what do you recognize it to be?

19 A. It says "Trading Authorization Agreement."

20 Q. Did you sign it?

21 A. I would assume both myself and my parents
22 signed -- yes. I see on the third page I signed it,
23 yes.

24 Q. And so did both of your parents?

25 A. Correct.

1 Q. Okay. So if you just read the first two
2 paragraphs of the first page of the exhibit to yourself.

3 A. Okay.

4 Q. Is that a -- is Ladd Exhibit 27 a full or
5 limited trading authorization?

6 A. So on the second page it says "full trading
7 authorization."

8 Q. And on the first page it says "if full trading
9 authorization is chosen, this authority includes the
10 right to request delivery of securities or monies from
11 the account in the account owner's or owners' name,"
12 right?

13 A. Correct.

14 Q. Okay. And you had full trading authorization,
15 correct?

16 A. Correct.

17 Q. So you could direct monies out of this
18 account, could you not, to yourself?

19 A. Apparently so, although I'm not positive.
20 Normally brokerage firms will only send out
21 distributions to same parties, but I don't know. I
22 never tried it. So...

23 Q. All right. So you never directed monies out
24 of the account to yourself?

25 A. Correct.

1 A. Not that I recall.

2 Q. Okay. After the full trading authorization
3 was signed, did your father do any of the trading in the
4 account?

5 A. I don't believe so.

6 Q. Okay. Did you start trading in the account
7 after the authorization was executed?

8 A. I -- I don't remember the exact timing, but I
9 at least know I bought that MGT stock. So I'm not
10 positive when.

11 Q. And did your brother have any access to this
12 account for trading purposes?

13 A. I don't think he did at all.

14 Q. How about your sister?

15 A. No.

16 Q. All right. Let's look at tab 29, which we've
17 marked as Ladd Exhibit 29.

18 (Deposition Exhibit 29 marked.)

19 Q. And it's a composite of the account statements
20 in the Seymour and Shirley account -- your parents'
21 account -- from April 1, 2015, through -- I believe it's
22 May 2016 -- yeah, through the end of May 2016.

23 Do you recognize these account statements?

24 A. Yes.

25 Q. I'm sorry did you say, "yes"?

1 parents' account at TD Ameritrade?

2 A. Yes.

3 Q. Okay. And I'll represent to you, but you can
4 figure it out by looking at the account positions as of
5 April 30th, 2016, and account positions as of
6 May 31, 2016, that you sold 372,863 shares of MGT in the
7 account during May.

8 Does that sound right to you?

9 A. Yes.

10 Q. Okay. Do you recall why you sold so many
11 shares during that month?

12 A. Well, that was after the best deal we did, the
13 John McAfee deal, and I felt it was a good time to sell.

14 Q. Okay. Let's look at your May 12 sales.
15 May 12, and that spans from 151597 through
16 151600.

17 A. Okay.

18 Q. You sold about 340,000 shares of MGT stock,
19 right?

20 A. Yes.

21 Q. And all over \$1 per share, correct?

22 A. Yes.

23 Q. And did you receive any proceeds of those
24 sales?

25 A. I did not receive directly proceeds from those

1 sales. I did receive money from my parents that
2 represented a big part of the profits of that trade,
3 because they were ecstatic for me, and they wanted to
4 help their son, and they didn't need their -- they
5 didn't need their money -- that money because, in
6 addition to this account, they were, as big savers, that
7 quite -- they had quite assets, quite the net worth.

8 So that's a longer answer than you wanted,
9 but...

10 Q. So on May 13th your mother writes you a check
11 for \$325,000 that you deposited; is that right?

12 A. Yes.

13 Q. And on that same day, TD Ameritrade wrote a
14 check to your mother and father for the identical
15 amount; is that correct?

16 A. I never saw that check, but it could have been
17 a wire, but I don't know. But TD would have sent to my
18 parents that money, then my parents, once it's in their
19 account, would decide to send it to me or not, but that
20 would be the sequence.

21 Q. Well, was it the same day as your mother
22 writing the check that she got the check from
23 TD Ameritrade?

24 A. Oh, I don't know exactly the timing. I -- I
25 thought I deposited the check on May 25th or something,

1 but I'm -- you can refresh me on the timeline.

2 Q. Sure.

3 So if you look at what's behind tab 30, which
4 we've marked as Ladd Exhibit 30.

5 (Deposition Exhibit 30 marked.)

6 A. Okay.

7 Q. I'll represent this was a document that was
8 produced by your parents' bank.

9 A. Mmmm-hmmm.

10 Q. That's a check you received from your mother
11 dated 5/13/2016, correct?

12 A. Yes.

13 Q. And what does it reflect on the back as to
14 when you deposited it?

15 A. I think it says the 18th.

16 Q. The 18th. Okay.

17 (Deposition Exhibit 31 marked.)

18 Q. Then behind tab 31, Ladd Exhibit 31, which I
19 don't imagine you've seen before, which is a -- I'll
20 represent to you came also from your parents' bank.

21 If you look on the second page of that
22 exhibit, SEC-CITIZENS-E-0001110, you'll see a check from
23 TD Ameritrade, and if you look very closely it's dated
24 May 13, 2016.

25 A. Okay. So that answers the earlier question of

1 whether it was a wire or a check. So they got a check.

2 Q. Right.

3 So it's likely your mother didn't even have
4 the money in her hand, didn't have the check, before she
5 wrote you the check for \$325,000; is that right?

6 MR. FORD: I'm sorry. You're asking him -- I
7 don't understand that question.

8 Does he know how much money was in his
9 parents' account?

10 MS. BROWN: Sure.

11 Mr. Ladd originally thought that his parents
12 waited for the money to hit their account before they
13 sent him the check.

14 Is that still your testimony?

15 MR. FORD: I think he said he was guessing,
16 but yes.

17 THE WITNESS: Here -- here's either what I
18 meant to say or what I did say, and I'll frame it a
19 different way, which Adam may be mad that there's too
20 much information.

21 But if you're asking could my mother write me
22 a good check for \$325,000 without first having a deposit
23 of, you know, let's say 200 or whatever the number is,
24 the answer is no.

25 / / / / /

1 BY MS. BROWN:

2 Q. All right. So since you have the ability to
3 transfer the money out of these accounts, did you ever
4 make an inquiry to TD Ameritrade about transferring the
5 monies directly to you, rather than going through this
6 circuitous path?

7 MR. FORD: I'm sorry. The circuitous path
8 language.

9 THE WITNESS: Do I recall asking TD if they
10 could wire or otherwise give me, the quote full trading
11 authorization person, the money directly without going
12 through the holders or without the holders knowing?

13 I worked at Neuberger Berman for 20 years.
14 You know the answer to that. I don't want -- I'm not
15 getting frustrated --

16 BY MS. BROWN:

17 Q. No. No. No. Mr. Ladd, I'm sorry, I want to
18 correct something right now. I didn't suggest that you
19 were trying to do this without your parents'
20 understanding.

21 A. Okay.

22 Q. So please remove that from your answer.

23 My question was: Did you discuss with
24 TD Ameritrade directing the monies directly to you?

25 A. I don't remember doing that.

1 Q. Did you ask your mother how she settled on
2 \$325,000?

3 A. I don't believe it's she settled on it, but I
4 thought that was a fair number that would help alleviate
5 my financial stress. Certainly leave them plenty for
6 taxes.

7 So it was just a number. Maybe it was a
8 number that I needed for my mortgage or something, but I
9 don't remember exactly.

10 Q. So you had a conversation with your mother
11 about what the amount would be?

12 A. I don't remember that.

13 Q. Well, you said you thought it was a fair
14 amount.

15 Did you tell her that?

16 A. Oh, I'm sure. She knew the number.

17 I know you don't know me, but that's an
18 implication that crosses a line to think I would take
19 money from my parents.

20 Sending my 93-year-old father a subpoena --

21 MR. FORD: Rob --

22 THE WITNESS: -- that contributed to his
23 death, is --

24 MR. FORD: Let's take a break. Why don't we
25 take a break. We'll come back on the record in five

1 minutes.

2 THE VIDEOGRAPHER: The time is now 3:17 p.m.

3 Going off the record.

4 (Off the record at 3:17 p.m. Back on the
5 record at 3:20 p.m.)

6 --o0o--

7 THE VIDEOGRAPHER: We're back on the record.

8 The time is now 3:20.

9 THE WITNESS: Can you hear me? Hello? Can
10 anyone hear me?

11 MR. FORD: Rob, I can hear you.

12 MS. BROWN: We can hear you.

13 THE WITNESS: All right. So just before we
14 start, I'll apologize for that path for losing my
15 temper, but, you know, it's sensitive with my father --
16 you know, having passed away right before COVID, the
17 whole thing. So let's move on.

18 I know you're doing your job, so I'll do my
19 best to move things along.

20 BY MS. BROWN:

21 Q. So -- so to return to what you were saying
22 about your discussion with your mother that you can
23 recall, you said something about you thought it was a
24 fair amount. So fair in terms of what?

25 I mean, what did you think you had done to

1 merit the payment to you? If you did.

2 A. Oh. No. What I meant by "fair" is I, in no
3 way, wanted to put them in worse position, so I had to
4 ensure there was more than ample monies to pay taxes.

5 And as I subsequently found out, their social
6 security payments went up and all this, so there was a
7 whole, you know, calculation of either me owing them
8 money back or something, but that's what I meant by
9 "fair."

10 Nothing to do with an investment management
11 fee or something, it's just fair to keep them -- they
12 should not lose money from it.

13 Q. So I'm interested in understanding why it is
14 that you didn't think it was also fair for them to keep
15 all of it?

16 MR. FORD: I think you're twisting what he's
17 saying about fair. He's testified that his parents
18 wanted to give him some money.

19 THE WITNESS: My parents would have given me
20 the entire amount of money. You know, they were
21 thrilled, but that would have put them in a negative
22 position. That was not fair. That's what I'm trying to
23 say.

24 BY MS. BROWN:

25 Q. It would have put them in a negative position

1 how?

2 A. Well, if they gave me the entire proceeds.

3 Q. I see. I see.

4 Okay. So how did you treat the \$325,000 on
5 your taxes?

6 A. I did not treat it, I view it as a loan
7 against future inheritance that, down the road, it will
8 be sorted out.

9 Q. Okay. All right.

10 So tell me about your discussions, if you had
11 any, with your brother, Steven, about your parents'
12 payment to you of \$325,000.

13 A. Well, the only discussions I remember is
14 e-mails back and forth, and I believe my sister's
15 husband -- my brother-in-law -- got involved, too,
16 because he is the tax guy, and the effort was to ensure
17 that it was not unfair, at least in my definition of
18 fairness.

19 Q. And did you have any discussions with anyone
20 about your paying the increased taxes that your parents
21 owed as a result of the profits from this account?

22 A. Well, that's what I was referring to.

23 That the discussions with my brother and my
24 brother-in-law were undertaken to ensure that whatever
25 the number, 200,000 left, was sufficient for taxes

1 A. No particular reason. You know, just where
2 maybe money was available to pay that out of.

3 Q. Now, you first started selling shares in your
4 parents' TD Ameritrade account in May, you first tried
5 to do so on May 9th; is that correct?

6 A. Yes.

7 Q. All right. And you learned at that time that
8 you weren't allowed to do that, correct?

9 A. Well, yes. They required -- because they had
10 coded the stock as affiliate stock, that it required a
11 form 144.

12 Q. All right. So let's look at Ladd Exhibit 34,
13 which is behind tab 34.

14 (Deposition Exhibit 34 marked.)

15 Q. And I'll represent to you this is a document
16 produced by TD Ameritrade that is dated May 9, 2016, and
17 it appears to be a message that you wrote to
18 TD Ameritrade, but you tell me.

19 Is the text a message you wrote to
20 TD Ameritrade?

21 A. Yeah. That refers to I am the affiliate and
22 have Power of Attorney in this account and no
23 ownership-interest.

24 Q. All right. And it says, "The actual owner is
25 not subject to Section 16 reporting or form 144

1 reporting."

2 Do you see that?

3 A. Yeah.

4 Q. And on what did you base that statement?

5 A. Well, with my understanding, and maybe it's
6 wrong or right, that the shares were registered, they
7 were open market purchases.

8 And secondly, the owner of the shares was not
9 an affiliate, so that therefore, it didn't require a
10 form 144. And I believe that the reason I ended up
11 handwriting that 144 is because Sichenzia said you don't
12 need it. Yeah, I'm not going to write it, I don't need
13 it.

14 Q. Okay. So let's back up for a second.

15 So did you consult with Sichenzia before you
16 wrote this message?

17 A. Yeah. I mean, I definitely discussed with Jay
18 whether my father really needs to file 144, and I think
19 the conclusion is that's what TD Ameritrade wants.
20 You're not going to get anywhere without doing it, so
21 just do it.

22 Q. So did you have this discussion with
23 Mr. Kaplowitz on May 9th?

24 A. Oh, I have no idea.

25 MR. FORD: Rob, just be careful about any

1 privileged conversations.

2 THE WITNESS: Okay.

3 MS. BROWN: I'm sorry. I didn't hear that.

4 THE WITNESS: I don't want to waive privilege,
5 he said.

6 MR. FORD: I -- I was just reminding him to
7 not disclose any attorney/client privileges, but if he
8 can answer. He has answered, and I think continued to
9 answer. I was just reminding him.

10 BY MS. BROWN:

11 Q. Okay. Well, I'm trying to get to the date on
12 which you had this conversation with Mr. Kaplowitz about
13 your -- the requirement that you submit a form 144 for
14 trades in your father's account.

15 So can you give us any kind of estimate of
16 when that conversation occurred?

17 A. My estimate would be on or around this date
18 here.

19 Q. All right. And was that a communication by
20 telephone or by e-mail?

21 A. I don't recall.

22 Q. So what was TDA's response to this message, if
23 there was one?

24 A. I think it was the equivalent of pound sand.

25 File that form --

1 Q. All right.

2 A. -- or the stock can't get sold.

3 Q. All right. So let's look at Ladd Exhibit 35,
4 which is behind tab 35.

5 (Deposition Exhibit 35 marked.)

6 Q. And this is the document produced to us by
7 TD Ameritrade. It's from TD Ameritrade, and it looks to
8 be addressed to you.

9 Do you recognize it?

10 A. Yeah.

11 Q. And is that something you received from
12 TD Ameritrade on May 9th?

13 A. Yeah.

14 Q. And they write to you, "Thank you for
15 contacting TD Ameritrade. The account is restricted due
16 to you having a full trading authorization. To be able
17 to trade the shares you would need to fill out the
18 form 144 affiliate paperwork."

19 So my question to you is: Did that make sense
20 to you that the reason was because you had full trading
21 authorization?

22 A. That answer is, it did not at the time, and
23 even at this minute I'm confused, but that's all I can
24 say.

25 They also know that people conflate the word

1 attachments at or around May 9, 2016?

2 A. Yes.

3 Q. So looking at the guidelines, the 5th bullet
4 down --

5 A. Could I just -- could I just pause one second?
6 Can you close that blind? Sorry.

7 MR. FORD: Can we hold on one second?

8 THE VIDEOGRAPHER: Did you need to go off the
9 record?

10 MS. BROWN: I guess so.

11 THE WITNESS: He's closing the blind.

12 THE VIDEOGRAPHER: The time is 3:43 p.m.

13 We are off the record.

14 (Off the record at 3:43 p.m. Back on the
15 record at 3:44 p.m.)

16 --oOo--

17 THE VIDEOGRAPHER: The time is now 3:44 p.m.

18 We are on the record.

19 BY MS. BROWN:

20 Q. All right. So I was pointing you to the 5th
21 bullet down that says, "For listed and NASDAQ
22 securities, you may only sell a limited number of shares
23 during the preceding 90 days. Whichever following
24 calculation results in a higher amount would be the
25 formula used. One percent of the outstanding shares,"

1 or "the average weekly volume based on the preceding
2 four calendar weeks."

3 Do you see that?

4 A. I do see that.

5 Q. And that was consistent with your
6 understanding of those volume limitations, correct, for
7 affiliates?

8 A. For affiliates, yes.

9 Q. So you understood that for your trading you
10 were subject to those volume limitations, correct?

11 A. For my personal trading, yeah.

12 Q. And did you discuss with anyone whether those
13 rules applied to your sales of MGT stock held in your
14 father's account?

15 A. Yes. Those are the same discussions as
16 before. Is my father an affiliate? That is the
17 question.

18 Q. And that was --

19 A. Does he require -- right. And that conclusion
20 was, no. Notwithstanding TD Ameritrade's insistence
21 that he is.

22 So I believe that was a superfluous form 144,
23 but, you know, it didn't disrupt the market as far as
24 providing wrong information, so I let it go.

25 Q. And just in your prior answer you used the

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - -

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
) Case No.
vs.) 18 Civ. 8175 (ER)
)
BARRY C. HONIG, ROBERT LADD,)
ELLIOT MAZA, BRIAN KELLER,)
JOHN H. FORD, GRQ CONSULTANTS,)
INC. and HS CONTRARIAN)
INVESTMENTS, LLC,)
)
Defendants.)

VOLUME 2 - PAGES (173 - 335)

VIDEOTAPED DEPOSITION OF

ROBERT LADD

VIA REMOTE VIDEOCONFERENCE

FRIDAY, OCTOBER 16, 2020

Stenographically Reported by:
Victoria L. Valine, CSR, RMR, CRR, RSA
California CSR License No. 3036
Job No. 201016VV

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17 --o0o--
18
19
20

21 Videographer: Sarah Howard
22

23 (All parties appeared remotely via videoconference.)
24
25

1 it with a sale?

2 MR. FORD: Asked and answered.

3 THE WITNESS: Because I physically don't put
4 that code in. That's counsel that chooses a code.

5 BY MS. BROWN:

6 Q. And you didn't correct it?

7 A. I don't have the knowledge to correct it.

8 Q. I'm sorry. You don't have the knowledge to
9 correct it, is that what you said?

10 A. Mmmm-hmmm.

11 Q. Okay. Can you describe what your financial
12 condition was in May 2016, your personal financial
13 condition?

14 A. Um -- if you ask me questions about it, yes.

15 Q. Well, did you -- did you suffer financial
16 difficulties in May 2016?

17 A. Yes. We were moving. I owed money on a
18 mortgage -- I mean, nothing that the real world would
19 care about, but yes.

20 Q. And did you, in fact, bounce the \$23,000
21 check?

22 A. Say that again, please.

23 Q. Didn't you, in fact, bounce a \$23,000 check?

24 A. Refresh my memory, please, but I don't write
25 bad checks, and I would assume if it temporarily didn't

1 cover, it was satisfied within a reasonable period of
2 time, but --

3 Q. Okay. And were you in arrears on your
4 mortgage?

5 A. Yes. I think I was 60 days delinquent and
6 three months.

7 Q. Okay. Let me share with you something that is
8 not in your binder --

9 MS. BROWN: Adam, I should have said this
10 before, but I put the marked exhibits in the marked
11 exhibit folder. Let me just say one caveat, which is
12 that just because they are called marked exhibits, we
13 may not show him everything. And we'll deal with that
14 sort of after the deposition, if that's acceptable to
15 you --

16 MR. FORD: Okay.

17 MS. BROWN: -- I think that's what we
18 contemplate in our stip.

19 MR. FORD: That's fine.

20 MS. BROWN: Okay.

21 BY MS. BROWN:

22 Q. So Mr. Ladd -- and I'm going to blow this up
23 for you, I just want to sort of orient you if I can.

24 Do you see what I'm showing you here?

25 A. It appears to be the checking account

1 Can I see the check? To whom it was?

2 Q. I -- yeah. I don't have that here, but would
3 you agree with me that that's what this line at least --

4 A. Yes. That lines says --

5 Q. -- is telling us?

6 A. Yes. I know it doesn't necessarily matter,
7 but you use the word "bounce the check" to make me sound
8 like a deadbeat bouncer or whatever, but that check says
9 it was returned. It could have been returned for other
10 reasons other than non-sufficient funds. I don't see it
11 saying it was in a -- whatever it is.

12 Q. Fair enough.

13 A. But we could look at it more.

14 Q. Fair enough.

15 A. Okay.

16 Q. All right. So let's keep going down here.
17 What it looks like is you have some credit card debt,
18 Nordstrom's, Saks, Macy's, Bloomingdale's,
19 Bloomingdale's, right?

20 A. Yes. Pretty typical, yes.

21 Q. Macy's, Target, American Express?

22 A. Okay.

23 Q. Then I see something called SoFi. What's
24 that?

25 A. That's one of those online lenders. So that

1 would have been an installment loan from them.

2 Q. Okay. And how many installment loans were you
3 carrying in May 2016?

4 A. I don't recall. But looking here I see
5 LendingClub, they're the same. And then there's another
6 company called Prosper. So...

7 Q. Okay. So there are two LendingClubs and
8 you're paying them -- the first one is you're paying
9 them 1,100, the second one you're paying 500, and then
10 Prosper you're paying another 1,100, and Prosper again
11 for 331, right?

12 A. Yes.

13 Q. And then we see some car payments, VW Credit,
14 Ford Credit, Lexus Financial?

15 A. Yes.

16 Q. Correct?

17 A. Yes.

18 Q. All right. So can you tell me what your total
19 outstanding installment loan was with all of these
20 LendingClub, and SoFi, and Prosper as of May 2016?

21 A. I can't. I could try to help answer the
22 question with my knowledge that -- I'll just answer no.

23 MR. FORD: Rob, do you want me to get you a
24 calculator and then you could just type in these
25 numbers?

1 THE WITNESS: No. I think she asked me what
2 the outstanding balance is. So --

3 MS. BROWN: Right.

4 MR. FORD: Nancy, not the monthly payment?

5 THE WITNESS: Right. So what I was trying to
6 say is that these loans are generally restricted to
7 about 30,000 each, so I would say 90,000 potentially.
8 The reason the payments are so high is because they have
9 amortizations of only three years.

10 BY MS. BROWN:

11 Q. Okay. So you can put that aside.

12 All right. So now we're going to move to the
13 next binder. Do you have that?

14 A. I think we have to open that now.

15 MR. FORD: Nancy, do you want me to open the box?

16 MS. BROWN: If you would, please.

17 I'm not sure you guys are aware we're not
18 going to be coming back to binder number 1 frequently,
19 but we may do so, so I would keep it not far away.

20 THE WITNESS: Okay. I have that binder.

21 MS. BROWN: Great. Thank you.

22 BY MS. BROWN:

23 Q. So Mr. Ladd, who is Drew Cicciarelli?

24 MS. BROWN: And for the Court Reporter, that's
25 C-I-C-C-I-A-R-E-L-L-I.

1 A. Yes.

2 Q. And you knew that that was not, in fact, true,
3 correct?

4 A. I know now that it -- when you read it, it is
5 incorrect. At the time I put it in, I unfortunately
6 missed the mistake.

7 Q. And what part of it do you now know to be
8 inaccurate?

9 A. Well, the way it reads in this release, is if
10 John McAfee himself sold McAfee Associates to Intel for
11 7.6 billion all at once, like that he was at McAfee
12 Associates, and that when it was sold, he was at McAfee
13 Associates.

14 Q. And at the time this press release was issued,
15 you knew that McAfee sold his interest in McAfee
16 Associates or Inc. in the 1990s well before the company
17 was sold to Intel; isn't that correct?

18 A. I knew that. I think everyone knew that, but
19 yes.

20 The funny story is the highest viewed YouTube
21 video was how to -- how to uninstall McAfee anti-virus
22 done by John McAfee.

23 Q. Right.

24 A. So...

25 Q. All right. So I think you've just described

1 A. At least my attorneys, the printing company,
2 and the New York Stock Exchange.

3 Q. Okay. And of those three groups of
4 individuals that you've mentioned, which of them, if
5 any, had a responsibility for fact checking your press
6 release?

7 A. I don't think fact checking is an occupation
8 for any of those people.

9 Q. Did you, at the time, think that that was an
10 occupation for any of those people?

11 A. No. I -- I say that thinking in my head of
12 what a fact checker is, and what I'm referring to is
13 someone who will -- what the accountants would call tick
14 and tie every little word.

15 I don't want that to imply that the overall
16 veracity of the -- for example, we had no deal with
17 McAfee. I am certain our attorneys would say don't send
18 out that press release.

19 Q. Right. So could you --

20 A. They might not know, but...

21 Q. So you relied on people to fact check to the
22 extent that they were aware of the facts; is that what
23 you're saying?

24 A. I'm saying that the people that received it
25 would be able to determine, on a high level, whether

1 it's accurate.

2 Q. And by "it," you mean the entire press
3 release, correct?

4 A. Yes. I'm sorry. The entire press release.

5 Q. All right. Thank you.

6 So let's look at Ladd Exhibit 72, which is
7 behind tab 72.

8 (Deposition Exhibit 72 marked.)

9 Q. And that's an e-mail from Grady Kittrell to
10 Robert Ladd dated May 6, 2016. And it says "Forward:
11 Proposed PR Attached."

12 Do you recognize Ladd Exhibit 72 as an e-mail
13 Mr. Kittrell sent you?

14 A. Yes.

15 Q. And as you read this e-mail, is he sending
16 back to you a draft of the press release with comments
17 supplied by Mr. Sandler?

18 A. Yes. That's what it appears.

19 Q. All right. And Mr. Sandler was who?

20 A. He was the owner/operator of the incubator in
21 Opelika.

22 Q. And he's currently in jail, is he not?

23 A. I believe he is, yes.

24 Q. So the draft that Mr. Kittrell forwards to
25 you, which is on the back of this exhibit, that didn't

1 Mr. Kaplowitz on it?

2 A. I mean, that would be the protocol, so I -- I
3 hope I did. I assume I did.

4 Q. Okay. Well, if you look at the last page of
5 the exhibit, it looks like a reference below your
6 signature block to the attachment and it says, "PR
7 9 May 2016 FINAL."

8 Does that refresh your recollection that you
9 were attaching the press release?

10 A. Yes.

11 Q. Okay. And does seeing this e-mail from
12 Mr. Kaplowitz, refresh your recollection about any
13 conversation you had with him about any changes to the
14 press release between the draft he had seen earlier and
15 the draft he was seeing the morning of May 9th?

16 A. It doesn't. And just so you are aware, that's
17 maybe 10 words in an otherwise long press release, long
18 8-K, everything else.

19 So except for the fact the short pointed it
20 out the next day, I don't understand why the immense
21 focus on one little mistake in the initial press
22 release. I just -- like why do you think everybody was
23 paying attention to that one line?

24 Q. I appreciate your question, but I'm --
25 personally I'm not --

1 at it. Well, if I am ever watching and see this answer
2 come up, 'this man is the most universally known name in
3 cyber security. Sold his startup company to Intel for
4 \$7.6 billion. Is frequently on CNBC, Fox News,
5 Bloomberg, 'Wall Street Journal' and recently became the
6 CEO of a \$9 million company and renamed it after --
7 renamed it after himself,' I will hit the buzzer, wager
8 all of my money, and say 'Alex, who is John McAfee?'"

9 Do you see that?

10 A. Yes.

11 Q. So, in fact, Stockbeast, an entity that you
12 retained, included that false statement from the press
13 release in the first paragraph of this piece; did it
14 not?

15 A. Yes. And I would add that many news outlets
16 erroneously say that as well. It's not that it was
17 never said before, but that statement that he wrote is
18 not correct.

19 Q. And then if we look at the disclaimer that
20 comes with the piece, it's on page 6 of 8, the one, two,
21 third full paragraph begins, "Stockbeast is oftentimes
22 compensated to feature certain companies.
23 Stockbeast.com has been compensated for this report/news
24 updates/social media/corporate communications on MGT the
25 sum total of \$125,000 from the issuer MGT for a

1 two-month MGT contract."

2 Was that an accurate statement of how much MGT
3 had paid for Stockbeast services?

4 A. Yes.

5 Q. Did you review a draft of this Stockbeast
6 article, Holmes Exhibit 28, prior to its publication?

7 A. No.

8 Q. Did you have a discussion with anyone, prior
9 to its publication, that it was about to come out?

10 A. No.

11 Q. And how did you come to retain Stockbeast?

12 A. Um --

13 Q. Whose suggestion was it?

14 A. I believe that was the suggestion of an
15 employee or consultant of ours named Steve Schaffer who
16 was a little more aware of the mailing lists that had
17 the biggest circulation.

18 Q. And how do you --

19 A. But that didn't matter much.

20 Q. Okay. Thank you.

21 How did you -- what was your understanding of
22 how it was that he was aware of which publications had,
23 I guess you're saying, a good mailing list?

24 A. How Steve was?

25 Q. Mmmm-hmmm. Yes.

1 Q. And did you discuss that change with anyone?

2 A. Oh, sure. That was -- that was vetted inside
3 out.

4 Q. Okay. Did you make any additional disclosures
5 that would point out what had been erroneous in the
6 original press release?

7 A. I did not.

8 And I should also state that, with the
9 exception of that one short seller, that no one else
10 brought that to our attention.

11 And we were doing it mainly because we know
12 that short seller contacted the SEC and tried to whistle
13 blow, you know, a giant fraud based on one small
14 misstatement. That's why we took a lot of care and
15 effort into doing this language in the 10-Q.

16 Q. I may have misunderstood your prior testimony,
17 but I thought you said that there were lots of short
18 sellers who wrote pieces about the error in the press
19 release; is that not your testimony?

20 A. Oh, if I did, I'm not sure.

21 But short sellers are also notorious for
22 having brothers and sisters in six different languages,
23 but --

24 Q. I'm sure they're notorious, Mr. Ladd, but what
25 I'm trying to find out is what you knew at the time.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--o0o--

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
) Case No.
vs.) 18 Civ. 8175 (ER)
)
BARRY C. HONIG, ROBERT LADD,)
ELLIOT MAZA, BRIAN KELLER,)
JOHN H. FORD, GRQ CONSULTANTS,)
INC. and HS CONTRARIAN)
INVESTMENTS, LLC)
)
Defendants.)
_____)

DEPOSITION OF

ROBERT LADD

VOLUME 4 - PAGES (406-506)

VIA REMOTE VIDEOCONFERENCE

FRIDAY, AUGUST 5, 2022

Stenographically Reported by:
Victoria L. Valine, CSR, RMR, CRR, RSA
California CSR License No. 3036
Job No. 220805VV

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(All parties appeared remotely via videoconference.)

1 A. -- at the time.

2 Q. I apologize.

3 Did you ever come to learn that she had worked
4 for Mr. Kesner at his prior firm?

5 A. Again, at the -- her testimony a few weeks
6 ago.

7 Q. All right. So let's talk about your Form 4
8 filings.

9 A. Mmmm-hmmm.

10 Q. Did you ever deliver trading records to Joan
11 Wu or anyone else at Sichenzia for the preparation of
12 your May 31, 2016 Form 4?

13 A. Deliver trading records? I don't remember.

14 Q. What documents did you give Ms. Wu to fill out
15 the Form 4?

16 A. I don't remember. I think just emails.

17 Q. You mean you just had email correspondence
18 with her, is that what your recollection is?

19 A. Yes.

20 Q. Do you recall in any of those emails actually
21 conveying to her records of your trading or other
22 records in connection with your 2016 trading in MGT
23 securities?

24 A. I don't remember.

25 Q. Can you name the investors in Laddcap Value

1 knows or recognizes any that are missing.

2 Asking him to scroll through -- I know you
3 said the document is not that long, but it's 50 pages.
4 So what you're asking him to do is scroll through a
5 50-page document, pluck out --

6 MS. BROWN: You know what --

7 MR. FORD: -- whatever it is and remember
8 whether anyone's missing. It's a very difficult
9 question. If there's another way to ask it that
10 would --

11 MS. BROWN: Sure.

12 MR. FORD: -- drive it home. For example, if
13 he knows someone --

14 MS. BROWN: Sure. Sure. Let's just walk
15 through it.

16 BY MS. BROWN:

17 Q. So the first one is the Bates number 87866.
18 And that's a K-1 issued to Laddcap Value Partners LP,
19 correct?

20 A. Yes. So during this discussion I went down
21 the side tabs every four pages, and I looked at who the
22 K-1s went to, and, to the best of my recollection, those
23 were the investors at that time in Laddcap.

24 Q. Thank you.

25 And so can you tell us, in having scrolled

1 incorrectly, B-U-K-I-E-T, and that appears on 87850.

2 A. Yes.

3 Q. All right. And so if, in fact, I'm correct
4 and there are no other indications of distributions in
5 2016 for any of these investors, that would mean that in
6 2016 Laddcap Value Partners did not make any
7 distributions to any investors other than the two I've
8 mentioned; is that right?

9 A. Correct.

10 Q. All right. So if we could look at Ladd
11 Exhibit 16.

12 A. Yes.

13 Q. If you look at the last page of the exhibit,
14 that's your Form 4 for May 31, 2016, correct?

15 A. The last page? Yes.

16 Q. All right. So can you explain how it is that
17 Footnote 1 describes a distribution of 465,171 shares of
18 MGT to limited partners that do not appear in the K-1s?

19 A. So the only partners that demanded cash got
20 paid those cash payments in 2016. It was subsequently
21 paid out in future years, and they were not -- I think,
22 as I've testified before, they were not distributed the
23 shares in kind, but rather it was a mistake in the
24 filing. They were sold by the --

25 Q. All right.

1 A. -- partnership, and the cash proceeds were
2 held and then distributed over the ensuing years.

3 Q. Okay. And so your understanding in filling
4 out the K-1s is that the distributions should not be
5 reflected until they're actually paid out; is that
6 right?

7 A. I -- that is how they are filled out, that
8 they're taxable or otherwise change the basis of the
9 person when they're paid out.

10 Q. All right. So -- so the information that
11 Ms. Wu included on Form 4 was all information that you
12 provided her orally; isn't that right?

13 A. Or in email. I don't recall.

14 Q. But is it your recollection that you provided
15 her no trading records or other documents in order for
16 her to fill out the Form 4?

17 A. Correct.

18 Q. I'm sorry?

19 A. Correct.

20 Q. Thank you.

21 Now, you previously testified that Form 4's
22 purpose was to disclose purchases and sales by
23 Section 16 officers and directors in the sale of their
24 security.

25 Do you recall that?

1 A. I -- I'm sure I said it. It's correct, yes.

2 Q. And why, if at all, would investors find it
3 important whether a Section 16 officer or director
4 bought or sold securities?

5 MR. FORD: Objection to form.

6 You can answer if you -- based on your
7 understanding.

8 THE WITNESS: There are some investors who
9 track mostly insider purchases as a method of finding
10 undervalued stocks.

11 Insider sales are less relevant in that, as
12 they say, there's 99 ways to -- reasons that people sell
13 stock but only one way they buy it. So that would be,
14 you know, the usefulness to the investor.

15 BY MS. BROWN:

16 Q. So is it your testimony that an investor would
17 not find important sales made by officers or directors?

18 MR. FORD: I'm going to object to the form.
19 What investor?

20 MS. BROWN: Any investor.

21 MR. FORD: Do you have any idea what any
22 investor would think?

23 THE WITNESS: As I testified, insider
24 purchases is the only strategy I've seen that, you know,
25 is followed.

1 BY MS. BROWN:

2 Q. And so your Form 4 of May 31, 2016 told
3 investors that you distributed 465,000 shares for zero
4 consideration, right?

5 A. Correct.

6 Q. And, in fact, you sold the shares for hundreds
7 of thousands of dollars, right?

8 A. Yes.

9 Q. So why didn't you tell investors that?

10 A. The net impact to ownership was the same in
11 that the shares were not controlled by me. Between
12 myself and my partners we had an understanding they
13 would get the cash out in the next year or so.

14 So, in my view, it was creating the correct
15 numbers to the investor. And -- but it's very
16 complicated when it gets down to fund reporting. As you
17 may be aware that it's -- you know, these pecuniary
18 interests and all that thing, but I wanted to convey
19 correctly that there was no further ownership.

20 Q. Okay. So is it your testimony that no
21 investor would care that you actually received cash
22 consideration for the sale of those shares?

23 MR. FORD: Object to form.

24 THE WITNESS: I -- my testimony would be that
25 would be the least important bit of information that